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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

SHONG-CHING TONG,

Petitioner

v.

DOMINGO GARCIA, ROSAMARIA S. GARCIA
aka ROSAMARIA S. RAINS,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Shong-Ching Tong
1741 Phillips Dr.
Pomona, CA 91766
(909) 622-6884

Petitioner Pro Se

96 pp

QUESTIONS PRESENTED

1. Whether Court of Appeals For The Ninth Circuit Erred In Denying Of Petitioner's Request For Publication of Its Memorandum?

2. Whether In re Claremont Is Appliable To The Garcias' Case?

3. Whether Court of Appeals For The Ninth Circuit Erred In Affirming The Bankruptcy Court's Findings Of Fact And Conclusions Of Law?

4. Whether Court Of Appeals For The Ninth Circuit Erred In Stating That Petitioner's Other Contentions Lack Merit?

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Petitioner prays that a writ of certiorari issue to review the memorandum of the United States Court of Appeals for the Ninth Circuit dated April 22, 1998.

The decision of the Court of Appeals for the Ninth Circuit was erroneous in the resolution of an important and recurr -ing issue significantly affecting the administration of justice.

OPINIONS BELOW

The Memorandum of the Court of Appeals in the instant case was issued on April 22, 1998 and is printed in Appendix B.

On May 21, 1998, The Appellate Court denied petitioner's Request for Publica- tion. The Order is printed in Appendix A.

Petitioner's Request For Publication is printed in Appendix C.

The "Appellant's Opening Brief" is printed in Appendix D.

The Bankruptcy Court's Judgment is printed in Appendix E.

The Bankruptcy Court's Findings of Fact and Conclusions of Law is printed in Appendix F.

Portions of Reporter's Transcript re the Bankruptcy Court's Trial is printed in Appendix G.

JURISDICTION

The Memorandum of the United States Court of Appeals for the Ninth Circuit was filed on April 22, 1998 and the Order denying Petitioner's Request for Publica -tion was filed on May 21, 1998. The jurisdiction of this Court rests on 28 U.S.C. Section 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 11 U.S.C. Section 523:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt -

(2) for money, property, services, or an extension, renewal, or refinancing of credit to the extent obtained by -

(A) false pretense, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition.

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

11 U.S.C. Section 727(a)(4)(A):

(a) The court shall grant the debtor a discharge, unless -

(4) the debtor knowingly and fraudulently, in or in connection with the case -

(A) made a false oath or account.

STATEMENT OF THE CASE

A. Procedural History:

1. On November 13, 1995, after that respondents/defendants, Domingo Garcia ("Garcia") and Rosamaria S. Garcia aka Rosamaria S. Rains ("Rains") (Collective -ly "Defendants"), repeatedly failed to

pay rents as agreed and that defendant Garcia's wage was being garnished, defen -dants fraudulently and falsely filed their Chapter 7 Bankruptcy Petition.

2. On January 10, 1996, the "Complaint to Determine Exception to Discharge" was filed by petitioner/plaintiff Shong-Ching Tong ("Plaintiff") with the U. S. Bank- ruptcy Court, Central District of Califor -nia, San Bernardino Division ("the trial court" or "Bankruptcy Court").

3. On or about February 9, 1996, defendants filed their "Answer" to plaintiff's Complaint.

4. On March 25, 1996, plaintiff filed "Notices of Motion and Motion for Order to compel answers to Request for Production of Documents . . ." after defendants repeatedly failed to respond to plain- tiff's discovery requests.

5. On July 25, 1996, plaintiff filed

"Notices of Motion and Motion for order to compel answer to Interrogatories" after defendants failed to respond to plaintiff's Interrogatories.

6. On December 20, 1996, the trial of the case was held. The trial court rendered its partial judgment in favor of defendants and ordered that "the defendants are entitled to discharge of their debts".

7. On January 17, 1997, plaintiff filed a "Notice of Appeal" appealing the trial court's partial judgment.

8. On January 17, 1997, plaintiff also filed the "Notice of Election of Appeal to the United States District Court", the "Designation of Records on Appeal", and the "Appellant's Statement of Issues to be presented on Appeal".

9. On February 3, 1997, the Clerk's Office of the Bankruptcy Court notified

plaintiff that plaintiff's Appeal was referred to "Eastern Division".
Later, the district judge, Central Division, Manuel L. Real ("Real") shopped for plaintiff's Bankruptcy Appeal.

10. On February 18, 1997, plaintiff filed copies of "Bankruptcy Court's Judg -ment and Findings of Fact and Conclusions of Law" with the Clerk's Office of the District Court as directed.

11. On March 19, 1997, plaintiff filed the "Appellant's Opening Brief" and " Records" with the Clerk's Office of the District Court as directed.

12. On March 25, 1997, plaintiff received district judge Real's "Order of Dismissal".

13. On April 14, 1997, plaintiff filed the "Notice of Appeal" appealing district judge Real's dismissal of plain -tiff's Bankruptcy Appeal.

14. On June 2, 1997, the "Appellant's Opening Brief" and "Excerpts of Record" were filed with the Court of Appeals for the Ninth Circuit.

15. On July 14, 1997, the "Appellant's Reply Brief" was filed after defendants filed their "Answer" Brief.

B. Statement of Facts:

1. Defendant Rains filed a Chapter 7 Bankruptcy Petition in 1989. Defendant Rains did not state this fact on their Chapter 7 Petition as required by Local Rule 104.

2. Defendants had falsely and fraudu-lently stated they owed debts as listed on "Schedule F" while they could not produce any documents to prove their fictitious debts.

3. Defendant Garcia had not made enough incomes to pay the monthly rent.

4. Defendant Rains had never informed

plaintiff that her disability benefits was already denied (Reporter Transcript, Appendix G).

5. Defendants had not produced all related documents to support their claims of fictitious debts.

6. On June 8, 1995, defendants made an Agreement with plaintiff. They agreed and promised to pay $100.00 or more per month, or as soon as defendant Rains received her disability benefits, to plaintiff for rents owed.

7. Defendant Garcia's Employer was served a "Writ of Execution (Money Judgment)" and the "Application for Earings Withholding Order" after defendants failed to pay the monthly payments as promised.

8. Defendants filed their Chapter 7 Bankruptcy Petition after the San Bernardino County Marshal was garnishing

defendant Garcia's wage and after defendants failed to honor their promise.

9. Plaintiff's Bankruptcy Appeal was referred to "Eastern Division". District judge Real shopped for the case.

10. Debtors/defendants are Mexican-Americans. So is the district judge Real.

11. District judge Real had been abused his judicial position releasing a "Mexican-American" young girl, Martha Dahdah, after she was convicted a felony "Bankruptcy Fraud".

12. District judge Real gave no authority or reason supporting his dismis-sal of plaintiff's Bankruptcy Appeal.

REASONS FOR GRANTING THE WRIT

1. The Court of Appeals For The Ninth Circuit Erred In Denying Of Petitioner's Request For Publication of Its Memorandum

The Court of Appeals for the Ninth Circuit erred in denying of petitioner's Request for Publication of its Memorandum when it cited In re Claremont Acquisition Corp., Inc., 113 F3d 1029 (9th Cir. 1997) to affirm district judge Real's dismissal of petitioner's Bankruptcy Appeal without due process of Law and the Bankruptcy Court's judgment.

As petitioner stated in the "Request for Publication" (Appendix C), the Court of Appeals for the 9th Circuit did not say which it was affirming - the dismissal of petitioner's Bankruptcy Appeal or the Judgment of the Bankruptcy Court. No matter what it was affirming, the Court of Appeals erred when it cited In re Claremont, Supra, because the In re Claremont is not applicable to either situation (See Appendix C).

2. In re Claremont Is Not Appliable To The Garcias' Case

As Appendix D - Appellant's Opening Brief - submitted to the Court of Appeals shows, Defendants not only had listed inflated and fictitious claims, they had also failed to produce documents to prove existences those inflated and fictitious debts and creditors.

Since the Court of Appeals for the 9th Circuit failed to follow its own case laws and this Court's precedents as the cases listed in No. 3, the Court of Appeals for the Ninth Circuit erred because In re Claremont is not applicable to the instant case.

3. The Court Of Appeals For The Ninth Circuit Erred In Affirming The Bankruptcy Court's Findings Of Fact And Conclusions Of Law

The Court of Appeals for the Ninth Circuit erred in affirming the Bankruptcy Court's Judgment when the Findings of Fact and Conclusions of Law are contrary to the following cases. All evidence and facts have proved defendants not only had made false oath. These cases can also prove defendants' false oath and account are material and, thus, warrant a denial of discharge of their debts:

(1) In re Pulos, 168 B.R. at 169 - if the lack of records is not adequately explained, the debtor is not entitled to a discharge.

(2) In Grogan v. Garner, 498 U.S. 279, 286-287, 111 S.Ct. 654, 659, the Supreme Court held that the "fresh start" is a Central purpose of the (Bankruptcy) Code, this opportunity is limited to the **"honest but unfortunate debtor"**.

(3) In re Lawler 141 B.R. 425, 428 -

429 (9th Cir. BAP 1992), the court stating that a debtor must "provide a credible explanation" for failure to keep records;

(4) In re Cox 904 F2d at 1401, the court held that the purpose of (Section 727) is to make the privilege of discharge dependent on a true presentation of the debtor's financial affair.

In the instant case, defendants the Garcias had failed to produce related documents regarding their inflated and fictitious debts and creditors.

(5) In Meridian Bank v. Alten 958 F2d 1226, 1233 (3rd Cir. 1992), the court held that once the objecting party shows that the debtor's records are absent or are inadequate, the burden of proof then shifts to the debtor to justicy the inadequacy or non-existence of the records.

The Meridian court also held that debtor must maintain and preserve adequate

records; if debtor fails to do so, there must be some justification (In the instant case, defendants have failed to produce documents showing that defendants did owe those listed debts.)

(6) In re Calder, 907 F2d 953, 955, the court agreed with the Bankruptcy Court's denying of **Calder's** discharge because **Calder's** omissions was a material matter that would support denial of discharge - **Calder's** omission of assets from a Statement of Affairs or Schedule;

(7) In re Chalik 748 F2d 616, 617, the Bankruptcy Court held **Chalik's** failure to list the Securities on his Bankruptcy Schedules constitutes a false oath knowingly and fraudulently made and barred a discharge (In the instant case, defendants omitted Rains' Ex-husband's Child Support Payments from their Schedule and Statement of Financial

Affairs).

The Chalik court, quoted the cases of In re Robinson 506 F2d 1184, 1188 (2nd Cir. 1974) and In re Mascolo 505 F2d 274, 277-278, held that a false oath regarding worthless assets constitutes a material omission and precludes discharge. at 618.

The Chalik court further held that the subject matter of a false oath is "Material", and thus sufficient to bar discharge if it bears a relationship to the Bankrupt's business transaction or estate or concerns the discovery of assets, business dealings, or the existence and disposition of his property. at 618

Also, the Chalik court stated that "This Circuit has also said that a discharge pursuant to 11 U.S.C. Section 727 (a)(4)(A) should not be granted when

the debtor knowingly and fraudulently made a false oath or account in connection with the Bankruptcy Proceeding (In re Raiford, 695 F2d 521, 522 (4th Cir. 1983) at 618.

The Chalik court in affirming Bankruptcy Court's denial of Chalik's discharge, stated that We glean further support from decisions of several circuits holding that detriment to the creditor need not be shown in order to bar discharge for making a false oath (Farmers Co-Operative Asso. v. Strunk 671 F2d 391, 395 (10th Cir. 1982) - A knowing and fraudulent omission from a sworn Statement of Affairs or Schedules may constitute a false oath).

(8) In Goff v. Russell Company 495 F2d 199, 201 (5th Cir. 1974), the court stated that the court recognized that full detail is not required but that

there should be written evidence, orderly made and preserved, from which the present and past financial condition of the Bankrupt may be asserted with substantial completeness and accuracy. Other courts have followed substantially similar tests" (see 1A Collier, para 14.32 at 1359).

(9) In Burchett v. Myers 202 F2d 920, 926 (9th Cir. 1953), the court stated that Section 14(c)(2) protects creditors, and they are not required to risk the withholding or concealment of assets by the Bankrupt under cover of a chaotic or incomplete set of records.

(10) In re Yeaton 457 F2d 803, 804 (9th Cir. 1972, per curiam), the court held that difficulty in preparing a tax return would be an indication of the inadequacy of records (In the instant case, defendants have failed to produce their 1993, 1994, and 1995 tax returns;

they have no documents showing they made so much incomes).

(11) In re Rusnak 110 B.R. 771, 776 (Bankr. W.D.Pa. 1990), the court held that complete disclosure is a condition precedent to the granting of a discharge.

(12) In re Bulter 38 B.R. 884 (Bkrtcy 1984), the court held that evidence demonstrated that debtors harbored an intent to hinder, delay, or defraud creditors when they omitted certain property from their Statement of Affairs, thus warranting denial of discharge (In the instant case, defendants did not list any Child Support Payments owed by Rains' Ex-Husband. Further, Rains has not made any efforts to collect).

(13) In Swicegood v. Ginn 924 F2d 230 (11th Cir. 1991), the court held that Chapter 7 debtor's omission of assets from his Bankruptcy Schedule was both

deliberate and material, as required to deny discharge of debts on basis that debtor made false oath or account.

(14) In re Van Den Heüvel 125 B.R. 846 (Bkrtcy S.D.Fla. 1991), the court held that the purpose of Section 727 (a)(4)(B) is to prevent fraud by the presen-tation of inflated or fictitious claims or use of such claims (In the instant case, defendants listed several creditors. But they had failed to produce documents supporting their inflated or fictitious claims.)

(15) In re Kim 163 B.R. 157 (9th Cir. BAP 1994), the court held that when statute's language is plain, sole function of courts is to enforce it according to its terms.

(16) In re Woodson 839 F2d 610 (9th Cir. 1988), the court held that as Collier noted, the scheduleing of interests in

property, both real and personal, is a very important duty, and the intentional and fraudulent omission of property from the sworn schedule will amount to an offense . . . (the operation of the Bankruptcy System depends on honest reporting).

(17) In re Martin 698 F2d 883 (7th Cir. 1983), the court in reversing and remanding the granting of discharge held that 1) evidence showed diminution in assets of debtor without explanation and 2) evidence showed concealment of assets by the debtor.

(18) In Mertz v. Rott 955 F2d 596 (8th Cir. 1992), the court held that debtor's failure to disclose estate tax refund he anticipated and subsequently received was material misrepresentation warranting denial of discharge (In the instant case, defendants received Tax

Refund. They did not disclose on their Schedules and Statement of Affairs.)

The Mertz court also held that Mertz' failure to disclose the state tax refund was done "with intent to omit and not report said asset".

Further, the Mertz court stated that "As the bankruptcy court pointed out, the petition, including schedules and statements, must be accurate and reliable, without digging out and conducting independent examination to get the facts (In the instant case, if plaintiff did not send discovery requests to defendants, plaintiff will never be able to know they have filed inflated and fictitious claims and creditors. They had never filed any amended schedule to correct their omissions and fictitious debts).

(19) In re Lund (9th Cir. BAP, 1996) 202 BR 127, 130, the court held that "If

the debtors made false representation regarding payments for the purposes of inducing Kuan to permit them to stay longer without paying rent, then the debtors obtained Property (Possession of the house without presently making rent payment) through false pretenses, a false representations, or actual fraud within the meaning of 11 U.S.C. Section 523 (a)(2)(A)."

The Lunds case file showed they received $25,000.00 settlement from his injury lawsuit. He did not pay their rents owed. Instead, the Lunds filed their Chapter 7 petition in order to stop a State Court's Eviction. The Lunds then settled with the Chapter 7 Trustee and paid $12,500.00 to the Trustee, who charged almost all of the $12,500.00 for the Trustee's service and creditors did not get one penny.

In the instant case, defendant Rains' Application for Disability Benefits had been denied repeatedly. Yet, defendants had never told plaintiff until after defendants were served the complaint objecting to discharge of defendants' debts (See Appendix F).

(20) In re Mazzola 4 B.R. 179 (1980), the court held that in view of the fact that the schedules and statement of affairs filed by the debtors contained numerous false statements and that in view of evidence indicating that the statements were made with a calculat-ed disregard for the importance of docu-ments signed under penalty of perjury, the debtors were not entitled to a discharge; their reckless disregard for the truth was the equivalent of the fraudulent intent necessary to bar discharge.

The Mazzola court also held that

Trustee in Bankruptcy and the creditors are entitled to honest and accurate sign -posts on the trail showing what property has passed through bankrupt's hands during a period prior to his bankruptcy.

The Mazzola court further noted that a reckless disregard of both the serious nature of the information sought and the necessary attention to detail and accuracy in answering may raise to the level of fraudulent intent necessary to bar a discharge.

(21) In re Nazarian 18 B.R. 143 (1982), the court held that fact that omissions from debtor's bankruptcy schedules involved large amounts of money and large number of transfers precluded a determination that the omissions were immaterial.

The Nazarian court further held that debtor's failure to promptly amend the

schedule was a "reckless indifference to the truth" which was equivalent of fraud.

4. The Court Of Appeals For The Ninth Circuit Erred In Stating That Petitioner's Other Contentions Lack Merit

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Appendix D - Appellant's Opening Brief - can show district judge Real had abused his judicial position to dismiss plaintiff's appeal after he shopped for the Bankruptcy Appeal from the "Eastern Division" just because district judge Real and defendants are all Mexican -Americans.

The fact that the Court of Appeals for the Ninth Circuit did not cite any authority supporting district judge Real regarding his dismissal of petitioner's Bankruptcy Appeal without due process of law clearly shows petitioner's other

contentions contained in the "Appellant's Opening Brief" have merits and the Court of Appeals for the Ninth Circuit should not ignore them.

CONCLUSION

It is clear that 1) debts of defendants are non-dischargeable, because defendants obtained the property by false pretense and false representation, 2) debts of defendants caused by their will-ful and malicious acts and conduct are non-dischargeable, and 3) debtors should be denied a discharge because defendants had knowingly, falsely, and fraudulently made oath and/or account in their Chapter 7 Petition and their "Answer" to plaintiff's Complaint.

Under "Equal Protection of Law", district judge Real, a Mexican-American, should not ignore the law to cover his

follow Mexican-Americans' debts owed to plaintiff by oppressively and wantonly dismissing plaintiff's Bankruptcy Appeal.

Petitioner respectfully requests that a Writ of Certiorari be issued to review the Court of Appeals for the Ninth Circuit's Memorandum, the district judge Real's dismissal of plaintiff's Bankrupt -cy Appeal, and the Bankruptcy Court's holding that debtors are allowed to list any inflated and fictitious debts and creditors and make false oath and account in their Bankruptcy proceedings.

Dated: July 20, 1998

Shong-Ching Tong
Petitioner Pro Se

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: DOMINGO GARCIA; ROSAMARIA S. GARCIA aka ROSAMARIA S. RAINS, Debtors.	No. 97-55550
SHONG-CHING TONG, Plaintiff-Appellant, v. DOMINGO GARCIA, ROSAMARIA S. GARCIA aka ROSAMARIA S. RAINS, Defendants/Appellees	D.C. No. 97-0906-R
	ORDER FILED MAY 21, 1998 CATHY A. CATTERSON, CLERK, U.S. COURT OF APPEALS

Before: BRUNETTI, RYMER, and T. G. NELSON, Circuit Judges.

The request for publication is denied.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: DOMINGO GARCIA; ROSAMARIA S. GARCIA aka ROSAMARIA S. RAINS, Debtors.	No. 97-55550
SHONG-CHING TONG, Plaintiff-Appellant, v. DOMINGO GARCIA, ROSAMARIA S. GARCIA aka ROSAMARIA S. RAINS, Defendants/Appellees.	D.C. No. 97-0906-R MEMORANDUM* FILED April 22, 1998 CATHY A. CATTERSON, CLERK, U.S. COURT OF APPEALS

Appeal from the United States District Court for the Central District of California Manuel L Real, District Judge, presiding

Submitted April 20, 1998**

Before: BRUNETTI, RYMER, and T. G. NELSON, Circuit Judges.

* This dosposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Shong-Ching Tong appeals pro se the district court's dismissal of his appeal from a bankruptcy court's judgment in his action seeking determination of discharge-ability of debts of his former tenants, Chapter 7 debtors Domingo Garcia and Rosamaria Garcia. We have jurisdiction pursuant to 28 U.S.C. Section 158(d), and we affirm.

We review de novo the district court's decision on an appeal from a bankruptcy court. See Worthington v. General Motors Corp. (In re Claremont Acquisition Corp., Inc.) 113 F.3d 1029, 1031 (9th Cir. 1997). We review the bankruptcy court's findings of fact for clear error and its conclusions of law de novo. See id.

The bankruptcy court did not clearly

** The panel unanimously finds this case suitable for decision without oral argument. see Fed.R.App.P. 34(a): 9th Cir. R. 34-4.

err by finding that the Garcias did not commit fraud in connection with rents owed and properly concluded that the Garcias were entitled to discharge their debts. See 11 U.S.C. Sections 523 (a)(2)(A), 727 (a)(4)(A); In re Claremont 113 F.3d at 1031.

AFFIRMED. [1/]

1/ We have considered appellant's other contentions and conclude that they lack merit.

Shong-Ching Tong
1741 Phillips Dr.
Pomona, CA 91766

May 4, 1998

Ms. Cathy A. Catterson
Clerk, U.S. Court of Appeals
for the Ninth Circuit
P. O. Box 193939
San Francisco, CA 94119

Re: In Re Domingo Garcia, et al.
TONG v. GARCIA, et al.
97-55550
D.C. No. 97-00906-R
Bk No. SB 96-1022-MG

Dear Ms. Catterson:

Pursuant to Circuit Rule 36-4, I am requesting the publication of the "Memo -randum" decided by the Panel (Brunetti, J.; Rymer, J.; and T. G. Nelson, J.) and filed on April 22, 1998 on the following grounds:

1. The Memorandum establishes, alters, modifies or clarifies a rule or law.

2. It involves a legal or factual issue of unique interest of substantial public importance.

In the "Memorandum", the Panel cited the case In Re Claremont Acquisition Corp. Inc. (9th Cir. 1997) 113 F3d 1029 (Worthington v. General Motors Corp.), which did not say:

1) It affirmed the Bankruptcy Court's judgment after it reviewed the Bankruptcy Court's Findings of Fact for any error made and Conclusions of Law de novo. Instead, it affirmed the district court's decision after reviewed the Bankruptcy court's file.

In the instant case, the Panel did not say which ONE was affirmed - - the district court's dismissal of a Bankrupt -cy Appeal without due process of law or the Bankruptcy Court's judgment ????????

The Panel did not give any authority supporting its decision.

2) A district judge, an Mexican-American, can abuse his judicial position, told the court clerk giving him a Bankru-ptcy Appeal belonged to other Division. Then, the district judge dismissed the Bankruptcy Appeal **without due process of law** (when debtors are also Mexican-Americans. **Attachment 1 - Notice of Referral of Appeal**; see School Dist. of Kansas City, MO., et al. v. State of MO., et al. (1977) 438 F.Supp. 830. In the instant case, the district judge had violated Canon 2 of Judicial Code)

3) Debtors' debts are dischargeable when debtors knowingly and fraudulently made promise to pay back rents.

In the instant case, the Panel's decision was contrary to the existing laws which held that debtors' debts are not dischargeable IF debtors had know-ingly made false promise to pay rents owed (over a period more than 2 years

and totaling of $9,500) when they knew their promise was false. (See Attachment 2 - Notice of Social Security Administra -tion denying her disability benefits

RECONSIDERATION; Agreement To Pay Back R ents; Reporter's Transcript, Pages 28 - 30, 32 - 33).

4) Debtors' debts are dischargeable when debtors knowingly and falsely listed debts debtors knew those debts were phony and false.

In the instant case, debtors had knowingly listed many phony debts and could not produce any documents to prove debtors owed those phony debts (Attachment 3 - Reporter's Transcript, pages 163 - 166). The Panel's decision also disagreed with the cases listed in this letter.

5) Debtors' debts are dischargeable when debtors answered creditor's complaint with false statements.

In the instant case, debtors had answered my complaint with such false statements that the Petition including all Schedules and other attachments were filed correctly and contained truthful and accurate statements, descriptions, and amounts of all debts and property. Debtors could not produce all the documents to support their claims.

6) Debtors debts are dischargeable when debtors failed to disclose debtors' prior filing.

In the instant case, debtors had filed a Chapter 7 Petition just 6 years ago (Attachment 4 - Chapter 7 Petition, SB 89-10060-DN; Information Required by Local Rule 104).

The Panel's decision should be published, because it is invalidated the following holdings and others:

U. S. v. Kras 409 US 434, 446 (1973), the Supreme Court:

> "there is no constitutional right to obtain a discharge of one's debts in Bankruptcy".

In re Tabibien 289 F2d 793, 795 (2nd Cir. 1961):

> "It is true that a discharge is a privilege granted the honest debtor and not a right accorded all bankrupts".

In Field v. Mans (1995) 116 S.Ct. 437, the U. S. Supreme Court held that:

> "Fraud exception to discharge requires justifiable reliance."
>
> "In this case we condiser the level of a creditor's reliance on a fraudulent misrepresentation necessary to place a debt thus beyond release."
>
> "debts should be excepted from discharge under 11 U.S.C. section 523 (a)(2)(A) as a debt resulting from fraud."

In re Eisan (9th Cir. 1994) 14 F3d 469:

> "Debtor's bad faith in filing for Chapter 13 relief constitutes 'CAUSE' for dismissal of Bankruptcy Petition."

> "Bad faith exists in connection with chapter 13 filing where debtor intended only to defeat state court litigation."

> "Chapter 13 Petition would be dismissed as having been filed in 'bad faith', where debtor timed filing in order to frustrate state court enforcement action, submitted contradictory and misleading statements of his property interests."

In re Chinichian (9th Cir. 1986) 784 F2d 1440, 1445-46,

> "Bad faith exists where the debtor only intended to defeat state court litigation."

In re Cunningham, 163 B. R. 657 (Bkrtcy D.Mass, 1994):

> "Debtor need not actually procure money or services for himself, and if debtor benefits in some way from money obtained through his deception, debt is not dischargeable."

In re Kirsh, 973 F2d 1454, 1457 (9th Cir. 1992):

"the debtor's debts will not be discharged if the creditor can prove that: (1) the debtor made a material misrepresentation, (2) with knowledge of its falsi -ty, (3) with the intent to deceive, (4) on which the creditor justifiably relied, and (5) due to which the creditor sustained loss or damage."

In Re Kim, 163 B. R. 157 (9th Cir. BAP 1994):

"Bankruptcy discharge provisions are generally intended to provide fresh start only for honest but unfortunate debtor."

Farauki v. Emirates Bank Intern, LTD., 14 F.3d 244 (4th Cir. 1994):

"Court did not have to consider all of the grounds alleged in creditor's complaint for denials of debtor's discharge, once any one of the grounds was establish -ed by preponderance of evidence; proof of conduct satisfying any one of the statutory subsections was enough to justify denials of debtor's discharge."

"Chapter 7 debtor would be denied discharge for knowingly and frau -dulently make false oaths or accounts . . . ."

In re Semel 479 F2d 1269 (3rd Cir. 1973), 415 US 931 (1973):

"Debtor was denied a discharge based on false testimony concerning the debtor's assets".

In re Seruntine 46 B.R. 286 (CD Cal 1984):

"Debtor's discharge was denied because he intentionally undervalued his residence".

In re Lund (9th Cir. BAP, 1996) 202 BR 127, 130:

"If the debtors made false representation regarding payments for the purposes of inducing Kuan to permit them to stay longer without paying rent, then the dentors obtained Property (Possession of the house without presently making rent payment) through false pretenses, a false representations, or actual fraud within the meaning of 11 U.S.C. Section 523 (a)(2)(A)."

(The Lunds received $25,000.00 settlement from his injury lawsuit. He did not pay their rents owed. Instead, the Lunds filed their Chapter 7 petition in order to stop a State Court's Eviction. The Lunds then settled with the Chapter 7 Trustee and paid $12,500.00 to him, who charged almost all of the $12,500.00 for his Trustee's service and creditors did not get one penny).

In Benjamin Weintraub and Allen N. Resnick's Bankruptcy Law Manual, 3rd Ed.,

Warren, Gorham & Lamont, P. 3 - 15(4)(d): Knowingly and Fraudulently Withholding Records - The debtor is not entitled to a discharge if the debtor intentionally withholds any records, books, documents, or other papers relating to the debtor's property or financial affairs.

The Bankruptcy Law Manual, on P. 3 - 10: (3) Third Ground: Failure To Keep Books and Records -

> "Accordingly, the Code continues the practice of denying a discharge to a debtor who has cancealed, destroyed, mutilated, falsified, or failure to keep or preserve any record from which the debtor's financial condition or business transactions may be ascertained."

In Benjamin Weintraub and Allen N. Resnick's Bankruptcy Law Manual, 3rd Ed., Warren, Gorham & Lamont, P. 3 - 13(4)(a): Knowingly and Fraudulently Making A False Oath Or Account -

> "If a debtor intentionally makes a false statement under oath, whether in the Petition, Schedules, Statements, or testimony, the debtor may later find that a discharge will not be granted."

The Bankruptcy Law Manual, P. 3 - 14 (4)(b): Knowingly and Fraudulently Presenting Or Using A False Claim -

> "If the debtor engages in a scheme

involving the knowing and fraudulent filing or use of a false claim against the Bankruptcy estate, this conduct may give rise to an objection to discharge."

In Benjamin Weintraub and Allen N. Resnick's Bankruptcy Law Manual, 3rd Ed., Warren, Gorham & Lamont, P. 3-10, Third ground for a denial of discharge is failure to keep books and record. The Manual states:

"adequate books and records relating to the debtor's financial history are important to facilitate an orderly liquidation and distribution to creditors. Accordingly, the Code continues the practice of denying a discharge to a debtor who has concealed, destroyed, mutilated, falsified or failed to keep or preserve any records from which the debtor's financial condition or business transactions may be ascertained"

"negligence or sloppiness in keeping records may be enough to bar a discharge".

Thank you for your attention on my request.

Sincerely yours,

Shong-Ching Tong

CC: Domingo Garcia, Rosamaria S. Rains

STATEMENT OF JURISDICTION

Jurisdiction of the District Court arose out of and was based on 11 U.S.C. Sections 523(a)(2)(A) and 727(a)(4)(A).

The District Court dismissed plaintiff's[1] Bankruptcy Appeal after the "Appellant's Opening Brief" and "Records"[2] had been filed (EX 14; ER 179; ER 194).

Said order was entered on March 21, 1997. Plaintiff filed the "Notice of Appeal" on April 14, 1997 (EX 15). Said notice was timely according to Fed.R. App.P. 4(a)(1).

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[1] Plaintiff/Appellant Shong-Ching Tong will be referred to herein as "Plaintiff" and Defendants/Appellees, Domingo Garcia and Rosamaria S. Garcia aka Rosamaria S. Rains, as "Defendants".

[2] Appellant's Excerpts of Record arranged in chronological sequence and tagged as Exhibits 1 thru 15. References to "ER__" are to pages of Excerpts of Record.

This Court has jurisdiction pursuant to 28 U.S.C. Section 158 (d), in that, Order was entered on March 21, 1997.

ISSUES ON APPEAL

1. Whether the district judge abused his discretion in dismissing of plaintiff's Bankruptcy Appeal.

2. Whether the district judge had violated Due Process of Law in dismissing of plaintiff's Bankruptcy Appeal.

3. Whether there are sufficient evidence showing that defendants had committed frauds for rents owed to plain-tiff under 11 U.S.C. Section 523 (a)(2)(A).

4. Whether there are sufficient evidence showing that defendants should be denied a discharge of their debts under 11 U.S.C. Section 727 (a)(4)(A).

5. Whether defendants are entitled to another fresh start when they were/are

not honest and were/are not unfortunate debtors.

6. Whether failures of defendants in informing plaintiff that defendant Rains' applications for SSI Disability Benefits had been repeatedly denied constitute fraud in the instant case.

7. Whether repeated failures and ignorances of defendants to responsively and adequately answer plaintiff's Interrogatorries and produce all requested documents give grounds for the court to deny a discharge of defendants' debts.

8. Whether defendants' willful, wanton, malicious, and fraudulent acts and conduct in listing debts defendants knew were false give grounds for the court to deny a discharge of defendants' debts.

STANDARD OF REVIEW

The Appellate Court is asked 1) to

review the issues re the district judge's Order dismissing of plaintiff's Bankruptcy Appeal under the standard of abuse of discretion (In re Financial Corp. of American, 114 B.R. 221 (9th Cir. BAP 1990), 2) to review the Bankruptcy Court's conclusions of law de novo and its findings of facts under the clearly erroneous standard. In re The Two "S" Corp. v. Romley 875 F.2d 240 (9th Cir. 1989).

STATEMENT OF THE CASE

A. Procedural History:

1. On November 13, 1995, after that defendants repeatedly failed to pay rents as agreed and that defendant Garcia's wage was being garnished, defendants fraudulently and falsely filed their Chapter 7 Bankruptcy Petition (ER 69).

2. On January 10, 1996, the "Complaint to Determine Exception to Discharge" was

filed (EX 1).

3.On or about February 9, 1996, defendants filed their "Answer to Complaint" (EX 2).

4. On March 25, 1996, plaintiff filed "Notices of Motion and Motion for Order to compel answers to Request for Production of Documents . . ." after defendants repeatedly failed to respond to plaintiff's discovery requests (EX 3).

5. On July 25, 1996, plaintiff filed "Notices of Motion and Motion for order to compel answer to Interrogatories" after defendants failed to respond to plaintiff's Interrogatories (EX 4).

6. On December 20, 1996, the trial of the case was held. The trial court rendered its partial judgment in favor of defendants and ordered that "the defendants are entitled to discharge of their debts" (EX 7).

7. On January 17, 1997, plaintiffs filed a "Notice of Appeal" appealing the trial court's partial judgment (EX 8).

8. On January 17, 1997, plaintiff also filed the "Notice of Election of Appeal to the United States District Court", the "Designation of Records on Appeal", and the "Appellant's Statement of Issues to be presented on Appeal" (EX 10).

9. On February 3, 1997, the Clerk's Office of the Bankruptcy Court notified plaintiff that plaintiff's Appeal was referred to "Eastern Division" (ER 174). Later, the district judge Manuel L. Real ("Real") shopped for the Bankruptcy Appeal.

10. On February 18, 1997, plaintiff filed copies of "Bankruptcy Court's Judg -ment and Findings of Fact and Conclusions of Law" with the Clerk's Office of the

District Court as directed (ER 177, 179).

11. On March 19, 1997, plaintiff filed the "Appellant's Opening Brief" and " Records" with the Clerk's Office of the District Court as directed (EX 14; 178).

12. On March 25, 1997, plaintiff received district judge Real's "Order of Dismissal" (ER 194).

13. On April 14, 1997, plaintiff filed the "Notice of Appeal" appealing the dismissal of plaintiff's Bankruptcy Appeal (EX 15).

B. Statement of Facts:

1. Defendant Rains filed a Chapter 7 Bankruptcy Petition in 1989 (ER 66).

2. Defendants had falsely and fraudu -lently stated they owed debts as listed on "Schedule F" while they could not produce any documents to prove those debts (EXS 5, 6).

3. Defendant Garcia had not made

enough incomes to pay the monthly rent (ER 76, 148, 149).

4. Defendant Rains had never informed plaintiff that her disability benefits was already denied (ER 151, Reporter Transcript, PP. 22 thru 25; p. 22, line 25).

5. Defendants had not produced all related documents to support their claims of debts.

6. On June 8, 1995, defendants made an Agreement with plaintiff. They agreed and promised to pay $100.00 or more per month, or as soon as defendant Rains received her disability benefits, to plaintiff for rents owed (ER 151).

7. Defendant Garcia's Employer was served the "Writ of Execution (Money Judgment)" and the "Application for Earings Withholding Order" after defendants failed to pay the monthly payments as promised (ER 81, 83).

8. Defendants filed their Chapter 7 Bankruptcy Petition after the San Bernardino County Marshal was garnishing defendant Garcia's wage and after defendants failed to honor their promise.

9. Plaintiff's Bankruptcy Appeal was referred to "Eastern Division" (ER 174). District judge Real shopped for the case.

10. Debtors/defendants are Mexican-Americans. So is the district judge Real.

11. District judge Real had been abused his judicial position releasing a "Mexican-American" young girl, Martha Dahdah, after she was convicted a felony "Bankruptcy Fraud".

12. District judge Real gave no authority or reason supporting his dismis-sal of plaintiff's Bankruptcy Appeal.

DISCUSSIONS

I. District Judge Real Abused His Discretion in Dismissing of Plaintiff's

Bankruptcy Appeal

Defendants/Debtors filed their Chapter 7 Bankruptcy Petition in the U. S. Bankruptcy Court, San Bernardino Office, case no. SB 95-25818-MG (ER 1).

Plaintiff, as a Creditor, filed the "Complaint to Determine Exception to Discharge . . ." in the San Bernardino Office, case no. SB 96-1022-MG (ER 10).

On February 3, 1997, the U. S. Bank -ruptcy Court, San Bernardino Clerk's Office sent a "Notice of Referral of Appeal" to plaintiff (ER 173, 174). Plaintiff's appeal was referred to " Eastern Division" of the District Court. Later, district judge Real shopped plaintiff's Appeal.

On March 25, 1997, after plaintiff filed the "Appellant's Opening Brief" and "Records" on March 19, 1997 (EX 14),

plaintiff received district judge Real's "Order of Dismissal". District judge Real did not give any authority or reason for what he did (ER 194).

As ER 151 depicts, defendants owed rents over $9,500.00 to plaintiff. As defendants' documents contained in the "Excerpts of Record" and statements contained in the "Reporter's Transcript" demonstrate, defendants not only had committed Bankruptcy Frauds, defendants had also made false oaths and accounts.

District judge Real, a Mexican-American, should not spoil defendants, also Mexican-Americans, by dismissing plaintiff's Bankruptcy Appeal.

District judge Real not only had abused his judicial position in the instant case, he had also abused his judicial position eralier when he set free a young Mexican-American girl,

Martha Dahdah, after she had been convicted a felong Bankruptcy Fraud.

II. District Judge Real Had Violated Due Process of Law in Dismissing of Plaintiff's Bankruptcy Appeal

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"Due Process of Law" requires that a party shall be properly brought into court, and that he shall have an opportu -nity, when there, to prove any fact which, according to the condition and the usages of common law, would be a "protec -tion" to him or his property." (Emphasis Added) Goldie v. Goldie 79 N.Y.S. 268, 269; Larson v. Dicky 58 N.W. 167, 171; Kalloch v. Sup. Court of City and County of San Francisco, 56 Cal 229, 239.

In the instant case, as demonstrated by ER 20, 21, 29, 30, and 152 thru 156, defendants owed rents over $9,500.00 to

plaintiff. As Exhibits 3 thru 6 depict, defendants could not produce all documents supporting their accounts and oaths that their debts as listed in the Petition are true and correct.

Exhibit 13 can show district judge Real had abused his judicial position when he 1) joined unrelated cases on January 30, 1997, 2) ignored the law as the Court of Appeals reversed his rulings in In re Matter of Stephen Yagman and U. S. v. Flynt, and 3) violated the "Due Process of Law" in dismissing of plaintiff's Bankruptcy Appeal.

III. There Are Sufficient Evidence Showing That Defendants Had Committed Frauds For Rents Owed To Plaintiff Under 11 U.S.C. Section 523 (a)(2)(A)

Section 523 (a)(2)(A) provides that a debt is non-dischargeable when the

debts were obtained by false pretense, false representation and/or actual fraud.

Section 523 (a)(2) provides that the debtor cannot discharge his/her debt if he/she made:

> "(A) false pretenses, a false representation or actual fraud . . . .
>
> "The section clearly excepts a debt incurred by an extension of credit which the debtor obtains through fraudulent means."
>
> "A logical reading of the plain language of the statute shows that if a creditor suffers damages, the proximate cause of which is the fraud of the debtor in obtaining an extension of credit, then the creditor should be able to prevent the debt from being discharged. See generally In Re Britton 950 F.2d 602, 604 (9th Cir. 1991). This reading is consistent with the general policy that the discharge provisions are only intended to provide a fresh start for the honest but unfortunate debtor. Britton, Id. at 606

In re Cunningham, 163 B. R. 657

(Bkrtcy D.Mass, 1994), the court held that:

> "Debtor need not actually procure money or services for himself, and if debtor benefits in some way from money obtained through his deception, debt is not dischargeable."

In Coen v. Zick, 458 F.2d 326 (9th Cir. 1972), the court held that:

> "The statutory exception which measures nondischargeability is '. . . for liabilities . . . for willful or malicious injuries to the person or property of another . . . .' The exception is measured by the nature of the act, i.e., whether it was one which caused willful and malicious injuries. All liabilities resulting therefrom are non-dischargeable."

In Re Littleton, 942 F.2d 551 (9th Cir. 1991), the court noted that:

> "The BAP read 'the word necessarily produces harm' to mean that the act must be targeted at the creditor, at least in the sense that the act is certain or almost certain to cause financial harm."
> at p. 555.

The court further noted that:

> "Under the ruling of the BAP, an act is targeted at the creditor, if the predictable result of the debtors' intentional act would almost certainly be harmful to the creditor."

In the instant case, ER 76 can show defendants knew that the monthly rent for renting the apartment would be $800.00, that defendants' monthly incomes were only $1,668 ('95), $1,500 ('94) or $1,018 ('93), and that the minimum income to be eligible for renting the apartment would at least be $2,400.00.

Since defendants had lied to plaintiff that defendant Rains would receive the disability benefits and child support payments and since defendants' debts were incurred due to defendants' fraudulent and malicious acts and conduct, thus, the trial court erred in discharging of defen-dants' debts.

Section 523 (a)(2)(A) provides that a debt is non-dischargeable when the debts were obtained by false pretense, false representation and/or actual fraud.

In re Kirsh, 973 F2d 1454, 1457 (9th Cir. 1992), the court held that:

> "the debtor's debts will not be discharged if the creditor can prove that: (1) the debtor made a material misrepresentation, (2) with knowledge of its falsi -ty, (3) with the intent to deceive, (4) on which the creditor justifiably relied, and (5) due to which the credi -tor sustained loss or damage."

As Exhibits contained in defendants' "Answers" and in the "Exhibit Register" demonstrate, plaintiff have proved that:

1) defendants made material misrepre -sentation - AE 22 and 151 show defendant Rains knew she was denied her Disability Benefits on March 13, 1995. Yet, defen- dants had repeatedly, willfully, and falsely told plaintiff that she was wait -ing for her disability benefits (ER 151

- Agreement to Pay Back Rents);

- ER 107 and 139 thru 141 show that defendant Rains had received her Child Support Payments in 1994 and 1995. Yet, defendant Rains had repeatedly, willful -ly, and falsely told plaintiff that she was waiting for her Ex-husband's Child Support Payments;

- ER 76 shows that defendant Garcia had incomes in 1994 and 1995. Yet, defendants told plaintiff that defendant Garcia was receiving California Unemploy -ment Benefits Payments.

Since there are sufficient evidence proving that defendants had committed frauds under 11 U.S.C. Section 523 (a) (2)(A), thus, defendants' debts should not be discharged.

IV. There Are Sufficient Evidence Showing That Defendants Should Be Denied A Discharge Of Their Debts Under 11

U.S.C. Section 727 (a)(4)(A)

Section 727 (a)(4)(A) provides that debtors should be denied a discharge if debtors knowingly and fraudulently made false oath and/or account.

In the instant case, defendants had knowingly and falsely made the following oath and/or account:

1. On November 14, 1989, defendant Rains, under the name of Rosamaria Silvana Rains, filed a Chapter 7 Bankru -ptcy Petition (ER 66). Yet, on October 31, 1995, defendant Rains declared that she had never filed any Bankruptcy Petition (ER 70).

2. On December 20, 1995, during the "Meeting of Creditors", defendants declared that all statements and schedules contained in defendants' Petition were true, correct, and accurate when they knew their statements and schedules were false:

a) On Schedule F - defendants stated they had "Traffic Tickets, $2,000.00" when defendants knew that traffic fines are non-dischargeable, that the tickets were issued to defendant Garcia only, and that the total was much less than $2,000.00 (ER 85 to 88);

b) On Schedule F - defendants stated they owe $500.00 water bills to City of Ontario while defendants knew they did not owe any water bill, because defendants had never lived or done any business in the City of Ontario;

c) On Schedule F - defendants stated they owe $100.00 to Cable TV. Defendants had failed to produce any document to explain any necessity to have the Cable TV while they could not pay rents, etc.;

d) On Schedule F - defendants falsely listed "Credit Card Charges, $2,172.00" while defendants even did not own any

card;

e) On Schedule F - defendants falsely listed "Medical Charges of $2,000.00" when they knew they may owe no more than $1,562.00 (ER 108, 109);

f) On Schedule F - defendants stated they owe "Bottled water of $44.00" when they knew they made false statement;

g) On Schedule F - defendants listed "Phone Charges of $800.00", which they could not show any GTE bills to support their false claim;

h) On Schedule F - defendants stated "S. B. County Probation advanced funds of $2,100.00" to them when they knew they had defrauded S. B. County of $1,023 (ER 107);

i) On Schedule F - defendants listed "Student Loan of $1,100.00" when they knew they did not owe any money (ER 121, no.13; ER 133, no. 8; ER 67, 68);

j) Defendants had failed to produce

any receipts supporting their monthly expenditures of $1,990.00;

k) defendants had not listed Welfare Payments (ER 84), Child Support Payments on Form 7 - Statement of Financial Affairs, no. 2; ER 77);

l) defendants had not listed Wage Garnishments on no. 4 (ER 83);

m) defeandants had not listed that they sold their "Nissan Pick-Up" (ER 122, no. 18).

3. In defendants' "Answers to Complaint", defendants stated that the Petition including all Schedules and other attachments were filed correctly and contained truthful and accurate state-ments, descriptions, and amounts of all debts and property (ER 14, line 28; ER 15, lines 1, 2; ER 24, line 28; ER 25, lines 1, 2).

V. Defendants Are Not Entitled To

Another Fresh Start When They Were/Are Not Honest And Were/Are Not Unfortunate Debtors

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In Re Kim, 163 B. R. 157 (9th Cir. BAP 1994), the court held that:

> "Bankruptcy discharge provisions are generally intended to provide fresh start only for honest but unfortunate debtor."

In Farauki v. Emirates Bank Intern, LTD., 14 F.3d 244 (4th Cir. 1994), the court held that:

> "Court did not have to consider all of the grounds alleged in creditor's complaint for denials of debtor's discharge, once any one of the grounds was establish -ed by preponderance of evidence; proof of conduct satisfying any one of the statutory subsections was enough to justify denials of debtor's discharge."
>
> "Chapter 7 debtor would be denied discharge for knowingly and fraudulently make false oaths or accounts . . . ."

In Re Cecchini 780 F.2d 1440 (9th Cir. 1986), the court held that:

> "When a wrongful act done intentionally necessarily produces harm and is without just cause or execuse, it is 'willful and malicious' for purposes of statute barring discharge due to willful and malicious injury even absent proof of a specific intent to injure."
>
> "An injury to an entity or proper-ty may be a malicious injury within this provision if it was wrongful and without just cause or excessive, even in the absence of personal hatred, spite, or ill-will. The word 'willful' means 'deliberate or intentional', a deliberate and intentional act which necessarily leads to injury. Therefore, a wrongful act done intentionally, which necessarily produces harm and is without just cause or execuse, may constitute a willful and malicious injury."

Defendant Rains had filed a Chapter 7 Petition in 1989 (ER 66). Defendants had failed to produce requested documents to support their claims of debts. Defen-dants are <u>not honest and unfortunate</u> people as the law intended to give them a fresh start (ER 57 thru 62).

Since plaintiff had presented ample

evidence and facts to prove defendants' dishonest, fraudulent, willful, and malicious acts and conduct in the instant case, the trial court erred in discharging of defendants' debts.

Moreover, as ER 22 demonstrates, defendant Rains knew she did not have any chance to receive the disability benefits. Yet, defendant Rains repeatedly assured plaintiff that she would pay the rents owed as soon as she received the disability benefits. Defendants had will-fully and falsely made promises they knew were false. Thus, the trial court erred in discharging of defendants' debts.

VI. Defendants's Failures In Informing Plaintiff That Defendant Rains' Applications For Disability Benefits Had Been Repeatedly Denied Constitute Fraud

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In re Lund, 96 Daily Journal DAR

13584, 13585, the BAP stated that:

> "If the debtors made false representation regarding payments for the purposes of inducing Kuan to permit them to stay longer without paying rent, then the debtors obtained Property (Possession of the house without presently making rent payment) through false pretenses, a false representations, or actual fraud within the meaning of 11 U.S.C. Section 523 (a)(2)(A)."

The Reporter's Transcript, pp. 22 thru 25; ER 22 - Exhibit C - Rains " Answer to Complaint"; ER 76; and ER 151 - Agreement to pay back rents can prove defendants' frauds when they knew they were lying to plaintiff from 1994 to 1995.

VII. The Repeated Failures and Ignorances Of Defendants To Answer Plain -tiff's Interrogatorries And Produce Requested Documents Give Grounds For The Court To Deny A Discharge Of Defendants' Debts

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In Herbert v. Lando (1979) 441 U.S. 153, 177, 99 S.Ct. 1635, 1649, the Supreme Court held that:

> "the basic purpose of discovery is to take the game element out of trial preparation by enabling parties to obtain evidence necessary to evaluate and resolve their dispute beforehand."

As ER 14, 15, 24, 25, and 57 thru 62 depict, defendants in their "Answers to Complaint" had stated that the petition including all schedules and all other documents were filed correctly and contained truthful and accurate statements, descriptions, and amounts of all debts and property". Yet, defendants had repeated -ly, willfully, and oppressively NOT to answer the Interrogatories and NOT to produce the requested documents.

As the attached copies of "What should I know before filing for Bankruptcy ?" show, the trial court should deny a

discharge of defendants' debts, because defendants had given "fraudulent information" or had "acted fraudulently." (3(e)).

In Benjamin Weintraub and Allen N. Resnick's Bankruptcy Law Manual, 3rd Ed., Warren, Gorham & Lamont, P. 3 - 15 (4)(d): Knowingly and Fraudulently Withholding Records - The debtor is not entitled to a discharge if the debtor intentionally withholds any records, books, documents, or other papers relating to the debtor's property or financial affairs.

The Bankruptcy Law Manual, on P.3 -10:

(3) Third Ground: Failure To Keep Books and Records -

> "Accordingly, the Code continues the practice of denying a discharge to a debtor who has cancealed, destroyed, mutilated, falsified, or failure to keep or preserve any record from which the debtor's financial condition or business transactions may be ascertained,"

Since defendants had failed to answer

Interrogatories and to produce the requested documents, defendants' debts should not be discharged.

VIII. Defendants' Willful, Wanton, Malicious, And Fraudulent Acts And Conduct In Listing Debts Defendants Knew Were False Give Grounds For The Court To Deny A Discharge Of Defendants' Debts

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In Benjamin Weintraub and Allen N. Resnick's Bankruptcy Law Manual, 3rd Ed., Warren, Gorham & Lamont, P.3 - 13(4)(a): Knowingly and Fraudulently Making A False Oath Or Account -

> "If a debtor intentionally makes a false statement under oath, whether in the Petition, Schedules, Statements, or testimony, the debtor may later find that a discharge will not be granted."

The Bankruptcy Law Manual, P. 3 - 14 (4)(b): Knowingly and Fraudulently Presenting Or Using A False Claim -

"If the debtor engages in a scheme involving the knowing and fraudulent filing or use of a false claim against the Bankruptcy estate, this conduct may give rise to an objection to discharge."

In re Semel 479 F2d 1269 (3rd Cir. 1973), 415 US 931 (1973), the court held that debtor was denied a discharge based on false testimony concerning the debtor's assets.

In re Seruntine 46 B.R. 286 (CD Cal 1984), the court held debtor's discharge was denied because he intentionally undervalued his residence.

CONCLUSION

It is clear that 1) debts of defendants are non-dischargeable, because defendants obtained by false pretense and false representation, 2) debts of defendants caused by their willful and malicious acts and conduct are non-dis-

chargeable, and 3) debtors should be denied a discharge because defendants had knowingly, falsely, and fraudulently made oath and/or account.

Under "Equal Protection of Law", district judge Real, a Mexican-American, should not ignore the law to cover his Mexican-Americans' debts owed to plaintiff by oppressively and wantonly dismis-sing plaintiff s Bankruptcy Appeal.

In light of the foregoing facts and evidence, plaintiff requests that this court vacate the district judge Real's Order dismissing of plaintiff's appeal and enter an order that defendants' debts are not dischargable for the sake of the interest of justice.

Dated: May 31, 1997

Shong-Ching Tong
Appellant Pro Se

Shong-Ching Tong
1741 Phillips Dr.
Pomona, CA 91766
(909) 622-6884
Plaintiff Pro Se

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In re:	BK No. SB 95-25818 -MG
DOMINGO GARCIA, ROSAMARIA S. GARCIA aka ROSAMARIA S. RAINS,	Chapter 7
Debtors.	Adv. No. SB 96-1022-MG
SHONG-CHING TONG,	JUDGMENT
Plaintiff,	
vs.	Entered Jan 10, 1997
DOMINGO GARCIA, ROSAMARIA S. GARCIA aka ROSAMARIA S. RAINS,	Filed Jan 10, 1997
Defendants.	Trial Date:December 20, 1996 Time: 10:00 a. m. CTRM: "3", 2nd Fl.

The Complaint of Plaintiff Shong-Ching Tong seeking determination of the dischargeability of the State Court's judgment and damages to the property and

a denial of discharge of debts against defendants Domingo Garcia ("Garcia") and Rosamaria S. Garcia aka Rosamaria S. Rains ("Rains"), the debtors, having been tried on December 20, 1996 before the Honorable Mitchel R. Goldberg, Judge of the United States Bankruptcy Court, and the Court having filed Findings of Fact and Conclusions of Law, enters its Judgment as follows:

IT IS ORDERED, ADJUDGED, AND DECREED that the State Court's judgment of $9,509.03 is hereby determined to be dischargeable.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the partial damages in the sum of $777.86 is hereby determined to be non-dischargeable.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the cause of action under 11 U.S.C. Section 727 (a)(4)(A) is

hereby denied.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that plaintiff shall recover cost of $120.00 from defendants.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendants shall pay the total judgment of $897.86 to plaintiff according to schedules as follows:

1) $100.00 on January 10, 1997

2) $100.00 on 10th and 24th of each month thereafter until fully paid.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendants shall pay any unpaid amount of judgment immediate -ly, plus 10% annual interest, if defen -dants failed to pay the scheduled pay- ments on time.

DATED: Jan 10 1997

/S/

Mitchel R. Goldberg
United States Bankruptcy Judge

Shong-Ching Tong
1741 Phillips Dr.
Pomona, CA 91766
(909) 622-6884
Plaintiff Pro Se

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In re:	BK No. SB 95-25818 -MG
DOMINGO GARCIA, ROSAMARIA S. GARCIA aka ROSAMARIA S. RAINS,	Chapter 7
Debtors.	Adv. No. SB 96-1022-MG
SHONG-CHING TONG,	FINDINGS OF FACT AND CONCLUSIONS OF LAW
Plaintiff,	
vs.	Entered Jan 10, 1997
DOMINGO GARCIA, ROSAMARIA S. GARCIA aka ROSAMARIA S. RAINS,	Filed Jan 10, 1997
Defendants.	Trial Date:December 20, 1996 Time: 10:00 a. m. CTRM: "3", 2nd Fl.

FINDINGS OF FACT

1. Defendants Domingo Garcia ("Garcia") and Rosamaria S. Garcia aka Rosamaria S. Rains ("Rains") were

tenants of plaintiff Shong-Ching Tong ("Plaintiff").

2. From late October, 1993 to early June, 1995, defendants rented an apartment located at 209 Grayson Way, #C/#A, Upland, CA from plaintiff at a monthly rent of $730.00/$800.00.

3. From late November, 1993 to late May, 1995, defendants had owed rents totaling of $9,135.00.

4. Defendants had repeatedly requested plaintiff to give them time to pay the back rents, because 1) defendant Garcia had no regular incomes from his employments, b) defendant Rains was prengrant and waiting for child support payments from Ex-husband, and c) defendant Rains was applying for Disability Benefits from Social Security Aministar-tion due to alleged injury.

5. On May 29, 1995, plaintiff gave

a "3 Day Notice To Pay Rent or Quit" to defendants after plaintiff found out that defendants had lied to him.

6. On June 2, 1995, defendants were served plaintiff's Unlawful Detainer Complaint.

7. On June 6, 1995, defendants moved out of the aoartment.

8. On June 8, 1995, defendants signed an Agreement with plaintiff agreeing to pay $100.00 or more a month or pay all the rents as soon as defendant Rains received her Social Security Disability Benefits. Defendant Rains had not informed plaintiff that her prior Application were denied by the Social Security Administration and that she aws only appealing the ruling.

9. On June 28, 1995, Money Judgment totaling of $9,509.03 for rents owed and court costs was awarded to plaintiff by

the San Bernardino County Municipal Court, West Valley Division.

10. On August 28, 1995, defendant Garcia's employer was served plaintiff's "Earnings Withholding Order" and defendants Garcia's wages were garnished.

11. Damages done to the apartment by defendant Rains' children were beyond normal wear and tear and defendants' failures to prevent their children from so doing should be liable for some of the repairs, painting, and cleanings.

CONCLUSIONS OF LAW

1. There is no sufficient evidence showing that defendants had committed fraud for rents owed to plaintiff under 11 U.S.C. Section 523 (a)(2)(A).

2. Some of the damges caused by defendants' children met all necessary findings under the willful and malicious standard of 11 U.S.C. Section 523(a)(6).

3. There is no sufficient evidence showing that defendants should be denied a discharge of their debts under 11 U.S.C. Section 727 (a)(4)(A).

4. Plaintiff is entitled to recover partial damages in the sum of $777.86 from defendants and such damages in the sum of $777.86 from defendants and such damages are non-dischargeable under 11 U.S.C. Section 523 (a)(6).

5. Plaintiff is entitled to recover cost of suit in the amount of $120.00 from defendants.

DATED: Jan 10 1997

/S/

Mitchel R. Goldberg
United States Bankruptcy Judge

can -

Mr. Tong: Yes.

The Court: - to help you because I realize what you've done. But I want you to understand, Mr. Tong, and I think it's really important to understand.

Mr. Tong: Yes. Also, Your Honor, one more - one last thing, no more.

The Court: Sure.

Mr. Tong: You know, they - if like you said, they were not intended to defraud me or to lying to me, on their petition they don't have to lie. They can just tell straightly "I owe this guy this rent. I don't have to put down $2,000, traffic ticket. I don't have to put down her mother's credit bill on there."

The Court: True. But I have a feeling

that they went to a person who's not a lawyer and the lawyer said put anything and - correctly so, the non -lawyer said, "Put anything and every -thing that you may be responsible for." And it was for her mother's credit card that she borrowed some money and she wanted to make sure that no one could chase her, includ -ing her mother, let's say she borrowed some money from her mother because it's her mother's credit card, I would list everything including the kitchen sink, because if you don't list it, you'sre in trouble.

If you list it, they can never came back and bother you again.

Mrs. Garcia: Well, your Honor -

The Court: So listing it all - no, no, no. Don't - you don't - I don't want

an argument on this. You see, the reason I felt that the fact that they went - you say they may have gone overboard on the petition. There's nothing wrong with going overboard on the petition.

Where they have a problem is if they don't tell everything and even go overboard, so if there are any questions there's no stone left unturned. I get a lot of people who don't list stuff. Now, if they didn't list that they owned a house out in the Caribbean or if they didn't list they have a Mercedes-Benz somewhere, if they don't list property that they own, then that's fraud.

If they don't list certain other things that are assets, then that may be fraud. Sometimes they don't

- forget about retirement accounts because they're just sitting out there and people forget. And we don't call that fraud. But the fact that they listed everything, you're saying they should have had to list everything, that doesn't rise to the level of 727 fraud.

I know how frustrating it is for you because you see this world, and I wish the world was the way you see the world, I would be able to have lunch all the time instead of being out here if people acted the way you think they should act because you're a good guy. You acted morally, and you got hurt by it. Okay?

You act properly and you got hurt by it. That doesn't make them bad people. It really doesn't. And I have no evidence that they didn't

try their best. They may not have explained it to you the best. God knows all of you were on the witness stand, and I had to ask everyone some questions. But I didn't find anything on anyone's part that someone was doing something bad. Not bad.

You sit in my court for a few weeks and you'll see what bad is. Real bad is that I have to make a ruling is bad. And you'll sit there and say, "People do that?" Yeah. Everyday I see that. The real bad stuff. This doesn't come close to that kind of conduct. Not perfect, but not bad. Not at all.

Okay? I - there's nothing else that I really need any stuff on. I've got a very clear record. I want to complement both of you. The

first time you're a little angry with me. This time I really enjoyed having you here. I enjoyed having you in the courtroom. You presented as thorough a case as you can, probably better than some lawyers do, okay, trying to paint as thorough a picture as you could.

And you brought the information, and that's what a trial is about, to help me understand what happened between the two of you in 1994 up until middle of '95. I think I under - I feel like I can almost see what was going on out there. I have a real good picture of that.

And I have to make my ruling based on those pictures. And the pictures are he had a tenant who wasn't paying her rent. You tolerat -ed it, worked with her because you

hoped she would get some extra money. She said, "I've got social security going." She did. She didn't win. She was denied. She at least was not lying that she was trying, and they were struggling financially.

And you had the right to do in November or December of '94 or even August of '94 what you did in May of '94. And they, at least on one part, truly behaved properly. They got out right away. Again, if you come into my court, you will see people, attorneys coming in where they sued them, they delayed them, they got a judgment for an unlawful detainer. Then someone else lived in the house, delayed them more, then they filed bankruptcy, then someone else files bankruptcy and the people live in the house rent free for seven or

eight months because manipulating the legal system, until we put the hammer on them.

They didn't do that at all. You were able to turnaround the rent very quick. And that's good for them, at laest. These - you are not dealing with what I call "Bad people." They maybe believe, too, they could put their life together. They've got little kids. They want to stay in the house.

The hardest thing I have to say is when a woman walks into my room saying her husband left her and she's got three little kids in tow and they got to kick her out of the apartment, and I got to say, "Yes, you got to go." No one feels good about that, but that's the law. And you did what you felt was right too. Let both of

you get on with your lives.

The court's ruling is as follows: The Court finds that certain parts of the act at the time of moving out reflected damages to which the debtors are responsible for the repair work, and therefore, those damages should be non-dischargeable. The Court finds that the total sum of $777.86 is non-dischargeable. Because I'm making judgment for non-dischargeability, you had to pay to file this lawsuit, right?

Mr. Tong: Yes.

The Court: $120, right?

Mr. Tong: Yes.

The Court: Okay. You get that too.

Mr. Tong: Thank you.

The Court: Okay. Costs are automatically awarded in those cases. The total debt is $897.86. Now, Mr. Tong

wants to get on his life, too. You're living with the in-laws and you're hopefully - you're are working now for two weeks. I would like Mr. Tong not to go out and garnish your wages.

Mr. Garcia: He's not going to have to.

The Court: He would like to get some money so he can tell his people he did the best he can. It seems to me that if you were pay $200 a month - how offen do you get paid?

Mr. Garcia: Every week, your Honor.

The Court: You get paid every week. So how about - so you can use some of the weekly money, if you got to pay the in-laws some rent, you pay $100 in the middle of the month and $100 at the end of the month. So he's getting a check twice a month until you pay $897.

Mr. Garcia: That's fine, your Honor.

The Court: And if you don't pay, he gets to chase you and get interest on the money. Fair enough?

Mr. Garcia: Fair enough.

The Court: And I'm going to let you have Christmas. The first payment will be due in January.

Mr. Garcia: Great.

The Court: Not overnight. Okay, Mr. Tong?

Mr. Tong: Yes.